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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,609	10/23/2000	Guy Harrison	QSFT.004A	2965

20995 7590 09/14/2004

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EXAMINER

INGBERG, TODD D

ART UNIT PAPER NUMBER

2124

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### NOTICE OF NON COMPLIANCE

1. The reply filed on July 2, 2004 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

2. The Priority Date for case 09/695,609 must be perfected prior to further prosecution.

The Assignee's product documentation contained in the provisional application (60/167,326) reads directly on the claimed invention. The contents of the file wrapper for case 60/167,326, only contains a large printout of source code. No correlation has been made to the listing of the source code to the product, **Instance Monitor**. Correlating the contents of the product to the source code will perfect the priority date. An *affidavit* confirming the source code listing is the source code for the product Instant Monitor will secure the priority date for this application.

The following is copied from the First Action On Merits (FAOM) and was not responded to in the response of July 2, 2004.

**October 23, 2000** – Filing of US Application

**October 24, 1999** – Filing of Source code with prior art documents

**June 18, 1999** - Date of release for Instant Monitor (More than 1 year prior to filing US Application. The correlation between the large source code listing and the product documentation must be made to perfect the priority date and overcome the on sale for sale and for use bar of the rejection below.

#### *Priority*

3. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

However, the provisional application upon which priority is claimed fails to provide adequate

Art Unit: 2124

support under 35 U.S.C. 112 for claims 1 - 72 of this application. 60/167,326. This rejection can be overcome by an affidavit which perfects the claim to priority. The affidavit must draw a link between the product literature provided on **Instance Monitor** (List of Materials 5 – 9) and the source code provided. Furthermore, the enablement of the source code must be addressed. The statements that the source code provided has testing and found reliable for release as disclosed in the Instance Monitor documentation provided. Current effective filing date is **October 23, 2000**. If successful the priority date of October 24, 1999 will be established.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 72 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. Quest Software's commercial product Instance Monitor™ version 1.0. The commercial product is released June 18, 1999 as described in the Press Release "Quest Touts Breakthrough Software To Stop Oracle Bottlenecks", Computergram International.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

***Correspondence Information***

Art Unit: 2124

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd Ingberg** whose telephone number is (703) 305-9775. The examiner can normally be reached during the following hours:

Monday	Tuesday	Wednesday	Thursday	Friday
6:15 – 1:30	6:15- 3:45	6:15 – 4:45	6:15-3:45	6:15-130

This schedule began December 1, 2003 and is subject to change.

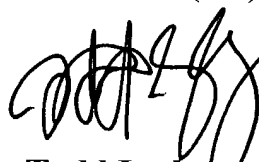
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on (703) 305-9662. Please, note that as of August 4, 2003 the **FAX number** changed for the organization where this application or proceeding is assigned is **(703) 872-9306**.

Also, be advised the United States Patent Office **new address** is

Post Office Box 1450

Alexandria, Virginia 22313-1450

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.



**Todd Ingberg**  
Primary Examiner  
Art Unit 2124  
September 10, 2004